

No. 14/13/87-6 Lab/1109.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Chief Administrator, H.S. A.M.B., Panchkula *versus* Dharambir :—

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 115 of 90

SHRI DHARAMBIR, S/O BODH RAJ, C/O SHRI S.S. GUPTA,
LOHAR BAZAR, BHIWANI

... Applicant.

Versus

1. Chief Administrator, Haryana State Agricultural Marketing Board, 6/6, Panchkula, District Ambala.
2. Administrator, Market Committee, Charkhi Dadri. ... Respondent-Management

Present :

Shri S.S. Gupta, for the workman.

Shri O.P. Lohariwala, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Dharambir and the above mentioned management for adjudication to this Court, —vide Labour Department letter No. Bwn./359--88/9399--9405, dated 1st March, 1989 :—

Whether termination of services of Dharambir is justified and in order ? If not, to what relief is he entitled ?

2. According to the applicant, he was appointed as Store Clerk-cum-Cashier on 23rd September, 1982 on temporary basis by the Haryana State Agricultural Marketing Board (hereinafter referred to as 'Board') and his services were entrusted to Market Committee (hereinafter referred to as 'Committee') Dadri, who shifted him to Sargam Restaurant, Charkhi Dadri. According to him, he continued in service upto 9th June, 1988, but was not allowed to join his duties on 10th June, 1988 and was told that his services had been terminated as the management had decided to close down the Sargam Restaurant. According to workman, since he was appointed by the Board, his services could not be terminated by the Committee. The workman has also stated that it was a case of 'retrenchment' and the same being in violation of Section 25-F of the Act. It was also stated that the post held by him was transferable throughout the State. The workman, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, stated that the workman was employed as per directions of the Board contained in letter dated 2nd December, 1982 and that the workman was issued appointment letter dated 31st March, 1984. It was, however, stated that the services of the workman were entrusted from 2nd December, 1982 itself to Sargam Restaurant, Charkhi Dadri. The management further stated that since the Restaurant was closed on 9th June, 1988, the services of Dharambir were terminated as per rules and that he was paid one month's salary in lieu of notice which he ultimately accepted. It was, therefore, stated that the services of the workman had been terminated on the closure of the Restaurant, for which he was appointed and it was denied that the post he was holding, was transferable. Several preliminary objections were also raised by the management, as they are reflected in the following issues framed on 21st August, 1989 by the then Presiding Officer, Dabour Court, Rohtak :--

- (1) Whether the workman is barred to file the present claim statement by his acts and conducts ?
- (2) Whether applicant is not a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 ?
- (3) Whether the respondent is not an 'industry' as defined in Section 2(j) of the Industrial Disputes Act, 1947 ?
- (4) Whether the claim is time barred ?
- (5) Whether this Court has no jurisdiction to entertain the present dispute ?
- (6) As per reference.

4. The parties led evidence in support of their rival claims. I have heard Shri S.S. Gupta, Authorised Representative of the workman and Shri O.P. Luhariwala, Authorised Representative of the management and have gone through the case file carefully. My findings on the above issues are as under :--

Issue Nos. 1, 2, & 3 :

5. All these issues were not pressed by Shri O.P. Luhariwala, Authorised Representative of the management and were conceded to by him during arguments. All these issues are thus decided against the management.

Issue No. 4 :

6. The services of the workman were terminated on 9th June, 1988 and he raised the demand notice on 29th June, 1988. It, therefore, can not be said that the claim is time barred. The issue is, therefore, answered against the management.

Issue No. 5 :

7. It cannot be said that this Court has no jurisdiction to entertain the present dispute and it was not shown as to how the jurisdiction of this Court is barred. Shri Luhariwala did not address any argument on this issue and accordingly, I answer this issue against the management.

Issue No. 6 :

8. The most question to be decided is as to when the Sargam Restaurant was started and whether the applicant was appointed in connection with the affairs of said Restaurant only or whether he was appointed by the Board prior to the start of said Restaurant.

9. Shri S.S. Gupta, Authorised Representative of the workman pointed out that the workman was appointed on 23rd September, 1982 as is evident from the copy of application Ex. W-1 and the orders passed thereon, which was Ex. W-2. It was argued by him that the appointment letter dated 31st March, 1984, a copy of which is Ex. W-3, was issued much after the workman had joined and it was argued by him that the workman was not appointed solely for Sargam Restaurant and that he was appointed by the Board.

10. As per the written statement of the management, the workman was appointed as per the directions of the Board, contained in memo dated 2nd December, 1982 and it was further pleaded that his services were entrusted from the very beginning i.e. from 2nd December, 1982 to the Sargam Restaurant, Charkhi Dadri. A perusal of documents Ex. D-1 to Ex. D-4 produced by the management, would show that it was in September, 1982, when the proposal for starting the Restaurant was sent and was approved by the Board and eight different posts were also sanctioned and sanction conveyed by the Board, --vide telegram sent on 28th September, 1982 (Ex. D-4). It is admitted by Dharambir, WW-1 in his examination-in-chief that the Restaurant was started on 4th October, 1982. The application for appointment was submitted by the workman on 23rd September, 1982, --vide Ex. W-1 and the orders thereon were passed, --vide Ex. W-2. However, the said order Ex. W-2 is undated and from Ex. W-2, it cannot be said as to when the appointment of Dharambir was approved. Although the appointment letter issued to the workman, was given as late as 31st March, 1984, but it is admitted in written statement that the workman was appointed on 2nd December, 1982 and a reference to the letter dated 2nd December, 1982 of the Board is also made in the appointment letter dated 31st March 1984 (Ex. W-3). The workman had not summoned the attendance register to show that he joined on 23rd September, 1982, as claimed and not 2nd December, 1982, as admitted by the management.

11. Dalip Singh, MW-1, has stated in his cross-examination that the Restaurant was running on 23rd September, 1982. As such, even if it be assumed purely for the sake of argument, that the workman joined on 23rd September, 1982, it can be said that he was appointed in the Sargam Restaurant. It is not out of place to reiterate that according to Dharambir, WW-1, the Restaurant was started on 4th October, 1982 and it is common knowledge that staff is recruited a few days prior to the inauguration of such a restaurant, so that when the restaurant is started, all staff is present on duty.

12. From the above discussion, it emerges that Dharambir was appointed for Sargam Restaurant and as it is admitted case that Sargam Restaurant had been closed, the services of the workman were rightly terminated on 9th June, 1988, after giving him salary for one month in lieu of notice.

13. So far as the re-employment of Ram Kishan, Counter Clerk, as is evident from Ex. M-1, is concerned, it is to be noted that he was holding a different post, while Dharambir, workman was holding post of Store Clerk-cum-Cashier. The case of Ram Kishan, therefore, cannot be equated with that of the workman and no relief can be granted to the workman on this ground.

14. In the light of discussion above, I hold that the services of the workman were rightly terminated and he is not entitled to any relief. The reference is answered accordingly. Costs made easy.

The 5th December, 1994

B.R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No.

Dated :

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B.R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6 Lab/1110.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central) Act No. XIV of 1947) the Government of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Chief Administrator, H.S.A.M.B., Panchkula versus Harish Chander Sharma.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 275 of 90

SHRI HARISH CHANDER SHARMA, S/O KHEM DEV, C/O SHRI SHAM SUNDER GUPTA, LOHAR BAZAR, BHIWANI

... Applicant

versus

1. Chief Administrator, Haryana State Agricultural Marketing Board, Panchkula.
2. Administrator, Market Committee, Charkhi Dadri (Bhiwani).

.. Management

Present :

Shri Sham Sunder Gupta, for workman.

Shri O.P. Luhariwala, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Harish Chander Sharma and the above mentioned management for adjudication to this Court, -- vide Labour Department letter No. Bwn./334--88/29367-72, dated 6th July, 1989 :--

Whether termination of services of Harish Chander Sharma is justified and in order ? If not, to what relief is he entitled ?

2. According to the applicant, he was appointed as Job Boy in Sargam Restaurant at Charkhi Dadri in 1983 and his services were terminated on 9th June, 1988 in an illegal and unjustified manner. The workman has also stated that it was a case of "retrenchment" the same being in violation of provision of Section 25-F of this Act. It was also stated that the post held by him, was transferable throughout the State. The workman, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, stated that the workman was employed as Job Boy on 7th June, 1983 on temporary basis for Sargam Restaurant. The management further stated that since the Restaurant was closed on 9th June, 1988, the services of Harish Chander were terminated as per rules and that he was paid one month's salary in lieu of notice, which he ultimately accepted. It was, therefore, stated that the services of the workman had been terminated on the closure of the Restaurant for which he was appointed and it was denied that the post he was holding, was transferable. Several preliminary objections were also raised by the management, as they are reflected in the following issues, framed on 13th July, 1990 by my learned predecessor :--

1. As per reference.
2. Whether the applicant is not a workman ?
3. Whether the applicant has no cause of action ?
4. Whether the workman is estopped from raising this dispute by his act and conduct ?
5. Whether the provisions of Industrial Disputes Act are not applicable to the present dispute ?
6. Whether the claim petition is barred by time ?
7. Whether this Court has no jurisdiction ?
8. Whether the management of Surgam Restaurant Charkhi Dadri is necessary party ? If so, to what effect ?
9. Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri S.S. Gupta, Authorised Representative of the workman and Shri O.P. Luhariwala, Authorised Representative of the management and have gone through the case file. My findings on the above issues are as under :--

Issue No. 1 :

5. None of the parties has placed on file the appointment letter issued to the workman in 1983. However, the workman in his demand

notice has admitted specifically that he had been working as job boy in Sargam Restaurant, Charkhi Dadri and it is also stated that the services of the workman were entrusted to Sargam Restaurant. The workman has not came out with any specific plea that after he was appointed on 6th July, 1983, he had worked for some time in Market Committee and that subsequently his services were entrusted to Sargam Restaurant. The post, which the workman was holding, was such that it could be utilized only in Restaurant and not in Market Committee. It is also not disputed that Sargam Restaurant was running on 6th July, 1983, when the workman was appointed. As such, it stands established that the workman was appointed as Job Boy for Sargam Restaurant only.

6. It is admitted case that Sargam Restaurant stood closed on 9th June, 1988, when the services of workman, alongwith others, were terminated and that the workman was paid one month's salary in lieu of notice. This is so evident from the copy of the orders dated 9th June, 1988 (Ex. D-8). Since the workman was specifically appointed for Sargam Restaurant and since Sargam Restaurant was closed on 9th June, 1988, his services were rightly terminated on closure of the said Restaurant, and as such, the workman is not entitled to any relief.

7. In the light of discussion above, this issue is answered against the workman.

Issue Nos. 2, 3, 4, 5 and 8

8. All these issues were not pressed by the Authorised Representative of the management and were conceded to by him during arguments. All these issues were answered against the management.

Issue No. 6 :

9. The services of the workman terminated on 9th June, 1988 and he raised the demand notice on 13th June, 1988. It is, therefore, cannot be said that the claim is time barred. The issue is, therefore, answered against the management.

Issue No. 7 :

10. It cannot be said that this Court has no jurisdiction to entertain the present dispute and it was not shown as to how the jurisdiction of this Court is barred. Shri Luhariwala did not address any argument on this issue and accordingly. I answer this issue against the management.

Issue No. 9-Relief :

11. In view of my findings on the above issues, the termination of services of the petitioner is held justified and in order and he is not entitled to any relief in this case. The reference is answered accordingly. Costs made easy.

The 5th December, 1994.

B.R. VOHARA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No.

Dated :

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary, to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B.R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6 Lab/1111.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. M.C. Charkhi Dadri *versus* Suresh Kumar.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, HISAR

Reference No. 124 of 93

Date of receipt.. 16-7-93

Date of decision.. 5-12-94

SHRI SURESH KUMAR, S/O SHRI SUBH RAM, C/O SHRI SHAM SUNDER GUPTA,
ADVOCATE, BHIWANI

VERSUS

MUNICIPAL COMMITTEE, CHARKHI DADRI

Present :

Shri S.S. Gupta, for the workman.

Shri Jagdish Sharma, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Suresh Kumar and the above mentioned management for adjudication to this Court,--*vide* Labour Department letter No. 22262-67, dated 24th June, 1993 :--

Whether termination of services of Suresh Kumar is justified and in order ? If not, to what relief is he entitled ?

2. According to the workman, he was appointed as Clerk on 11th April, 1988 and when he was discharging the duties of Meter Reader, he was not allowed to perform his duties with effect from 1st January, 1993 and he was told that his services were no longer required. The workman claimed that the action of the management in terminating his services, was illegal and against the provisions of Section 25-F of the Act and he prayed for reinstatement with full back wages and other consequential benefits.

3. The management in its written statement, pleaded that when there was work, the petitioner was engaged on daily wages and he was not the employee of the management. It is further claimed that as the petitioner was not an employee, question of termination of his services, did not arise and the management did not violate the provisions of the Act. Several preliminary objections were also raised, as they are reflected in the following issues framed on 14th January, 1994 :--

1. Whether termination of services of Suresh Kumar is justified and in order ? If not, to what relief is he entitled ?
2. Whether the case is barred by *res judicata* ?
3. Whether the claim statement is not maintainable ?
4. Relief.

5. The parties led evidence in support of their rival claims. I have heard Shri S.S. Gupta, A.R. of the workman and Shri Jagdish Sharma A.R. of the management and have gone through the case file. My findings on the above issues are as under :--

Issue No. 1:

6. Suresh Kumar appeared as WW-1 and has stated that he was appointed on 11th April, 1988 as Clerk and his services were terminated on 5th January, 1993 without giving him any notice and without paying him any retrenchment compensation. He produced several documents as Ex. W-1 to Ex. W-14. He admitted in his cross-examination that he was appointed on daily wages. He also stated in cross-examination that he filed a writ petition for regularisation of his services, which was dismissed by Hon'ble High court.

7. The management examined Kanwar Pal Singh, Accounts Clerk as MW-1, who stated that the petitioner was engaged on daily wages as Meter Reader/Clerk and as the writ petition of the petitioner was dismissed, his services were terminated. He admitted in his cross-examination that the petitioner had worked continuously from 11th April, 1988 to 31st December, 1992 and had done clerical work in various departments of the Committee. He also admitted that the petitioner in the writ petition filed by him, had prayed for regularisation of his services. He further admitted that no retrenchment compensation was paid to the workman.

8. It is evident from the admission of Kanwar Pal, MW-1 that the petitioner had worked continuously from 11th April, 1988 to 31st December, 1992 and as he has worked for more than 240 days during the preceding twelve months prior to 31st December, 1992 and thus, he was protected under the provisions of Section 25-F of the Act. The management was duty bound to comply with the provisions of Section 25-F of the Act before terminating the services of the workman. The management did not do so. The non-compliance of the mandatory provisions of Section 25-F of the Act, has rendered the termination of services of the workman, illegal. The petitioner is, therefore, not only entitled to reinstatement, but full back wages also. The issue is answered in favour of the workman.

Issue No. 2 :

9. This issue was framed with reference to the plea raised in preliminary objection No. 6 of the written statement, filed by the management. A copy of the order dated 3rd November, 1992, passed by Hon'ble High Court, is on the file as Ex. M-1. However, the grounds on which this writ petition was filed and the relief claimed therein, are not available on the file. It was argued by Shri S.S. Gupta, A.R. of the workman that in the High Court, the workman had sought relief of regularisation only, while Shri Jagdish Sharma, A.R. of the management, had stated that the relief against termination of services was also sought for in the said writ petition. The argument of Sh. Jagdish Sharma, A.R. of the management, cannot be accepted, because the writ petition was filed by the workman in 1989 and this conclusion is arrived at by me because the number of writ petition is marked as 12056 of 1989 on Ex. M-1. The services of the workman, were, however, terminated on 1st January, 1993. Even Kanwar Pal Singh, MW-1 has admitted in his cross-examination that in the writ petition, the workman had sought regularisation of his services. Since the question in this reference is about the validity of termination of services of the workman, which took place on 1st January, 1993, it cannot, therefore, be said that this reference is barred by *res judicata* and this issue is answered against the management.

Issue No. 3 :

10. This issue was not pressed by the A.R. of the management and was conceded to by him during arguments. This issue is, thus, answered against the management.

Issue No. 4-Relief:

11. In view of my findings on the above issues, the termination of services of the workman is held, illegal. The same is hereby set aside. The petitioner is reinstated in the same post forthwith, with full back wages and benefit of continuity of service and other consequential benefits. The reference is answered accordingly, with no order as to costs.

The 5th December, 1994

B.R. VOHRA,

Presiding Officer,

Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No.

Dated :

A copy, with spare copy, is forwarded to the Financial Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.